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10/808,005	03/24/2004	Barbara E. Bear	1024-002U	4651

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EXAMINER	
MCPHILLIP, ADRIAN J	
ART UNIT	PAPER NUMBER
3623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,005	BEAR, BARBARA E.	
	Examiner	Art Unit	
	Adrian J. McPhillip	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) *none* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Final Office Action is in response to Applicant's communication filed on September 23, 2008. Currently claims 1-9 are pending in this application.

Response to Arguments

2. Applicant's arguments filed on September 23, 2008 have been fully considered, but are not persuasive.

Applicant argues that the Kagami reference fails to teach, "a client requiring an appointment that differs from an already scheduled appointment for the client (see page 10 of Applicant's remarks)." The Examiner respectfully disagrees with this assertion because ¶ **[0032]** of the cited reference explicitly discloses a customer entering an identification number after which the system searches its records for stylists who that customer has patronized before based on the identification number. The system therefore keeps records of previous appointments that the customer has scheduled, with specific stylists, and uses this information to present the customer with a list of available appointment times, with one of said stylists, that differ from the previously scheduled appointments in the system's records. The client requesting the appointment in the above example therefore does in fact require an appointment that differs from an already scheduled appointment.

Additionally the Examiner would like to point out that Applicant's limitation, "electronically generating a client list of at least one client having a scheduled appointment, said at least one client requiring a different appointment than said scheduled appointment;" is directed in part towards non-functional descriptive material. Applicant's claim language does not positively recite that the claimed data: that a client requires an appointment different from an

already scheduled appointment, is actually used in the scheduling process. Applicant generates a client list of clients, and correlates the **client list to an appointment list**, where the claim recites that the client list is populated with **clients, but does not recite that** the client list is populated with data about the client's previous appointments or future appointment requirements. Therefore the clients in the client list are what is being correlated to the appointment list and not the information about the client – in Applicant's own words the correlating is done based on said at least one client and said at least one open appointment time slot (see claim 1). The claimed method never positively recites using the previously scheduled appointment information to determine open appointment time slots and really only uses this information to describe the types of clients that the Applicant's claimed method seeks to match with open appointment slots. Examiners need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). If the Applicant would like the above descriptive material to be accorded patentable weight the Applicant must positively recite the functional relationship between the material and the claimed method. Since the Examiner can identify no such relationship from the Applicant's claim language the aforementioned limitation has been accorded little patentable weight.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kagami (US 20020019755 A1).

As per claims 1 and 5, Kagami discloses a computer-implemented automated interactive method for matching an open appointment to a client, comprising:

- electronically generating a client list of at least one client having a scheduled appointment, said at least one client requiring a different appointment than said scheduled appointment (see paragraph 25 wherein at least one customer is electronically identified to require a different scheduled appointment and paragraph 32 wherein customers enter an identification number after which the system searches its records for stylists who that customer has patronized before based on the identification number. The system therefore keeps records of previous appointments that the customer has scheduled, with specific stylists, and uses this information to present the customer with a list of available appointment times, with one of said stylists, that differ from the previously scheduled appointments in the system's records.);
- electronically generating an appointment list of at least one open appointment time slot (see paragraph 25 wherein a list of available appointments is generated for customers with conflicting appointments);
- correlating said client list to said appointment list to generate a contact list, said contact list containing at least one appointment option based on said at least one client and said at

least one open appointment time slot (see paragraph 25 wherein at least one open appointment option is identified by correlating the schedules of the client and the stylist);

- electronically communicating said at least one appointment option to said at least one client, said at least one appointment option having a time of availability different than said scheduled appointment (see paragraph 25 wherein an appointment option with a different time availability is communicated to the client); and
- electronically selecting said at least one appointment option by said at least one client to fill said at least one open appointment time slot (see paragraph 39 wherein the system electronically fills the open slot with the client's appointment and sends a confirmation message).

As per claims 3 and 7, Kagami discloses a computer-implemented automated interactive method for matching an open appointment to a client wherein said electronic communication of said at least one appointment option to said at least one client is by telephone (see paragraph 17 wherein the disclosed system utilizes a telephone to facilitate electronic communication).

As per claims 4 and 8, Kagami discloses a computer-implemented automated interactive method for matching an open appointment to a client wherein said electronic communication of said at least one appointment option to said at least one client is by electronic mail (see claims 12 and 13 wherein appointment information is exchanged via e-mail).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kagami (US 20020019755 A1) in view of Waytena et al. (US 5978770 A).

As per **claims 2 and 6**, Kagami discloses a computer-implemented automated interactive method for matching an open appointment to a client but fails to teach the method further comprising: removing said selected at least one appointment option from said contact list; canceling said scheduled appointment of said at least one client; and placing said cancelled appointment in said appointment list. However, it was well known to one of ordinary skill in the art at the time of the invention to remove said selected at least one appointment option from said contact list, and official notice is hereby taken to that effect. It is well known for working scheduling systems to have some method of tracking the appointments that it has already booked to avoid double booking clients. Usually as soon as an empty slot is filled it is removed from the list of available appointments so that it cannot be issued to a second client; this constitutes the type of basic functionality that can be found in almost any effective scheduling program.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the method of Kagami to include the limitation of removing said selected at least one appointment option from said contact list, in order to keep the database of available appointments as current as possible, which in turn would minimize the occurrence of double-bookings and increase the efficiency of the system in general.

With respect to the remaining two limitations of claim 2, Waytena et al. does disclose a method further comprising:

- canceling said scheduled appointment of said at least one client (see paragraphs 16-17 wherein patrons are able to cancel their reservations); and
- placing said canceled appointment in said appointment list (see paragraph 16 wherein canceled appointments are released back into the appointment list).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to further modify the method of Kagami to include that of Waytena et al. in order to keep the database of available appointments as current as possible. This would increase the efficiency of the scheduler by allowing it to fill recently cancelled, empty appointments as soon as they become available, predictably resulting in a far more dynamic and useful embodiment of the invention, since such modifications could have been performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per **claim 9**, Kagami discloses a computer-implemented automated interactive method for matching an open appointment to a client, comprising:

- electronically generating a client list of at least one client having a scheduled appointment, said at least one client requiring a different appointment than said scheduled appointment (see paragraph 25 wherein at least one customer is electronically identified to require a different scheduled appointment);
- electronically generating an appointment list of at least one open appointment time slot (see paragraph 25 wherein a list of available appointments is generated for customers with conflicting appointments);
- correlating said client list to said appointment list to generate a contact list, said contact list containing at least one appointment option based on said at least one client and said at least one open appointment time slot (see paragraph 25 wherein at least one open appointment option is identified by correlating the schedules of the client and the stylist);
- electronically communicating said at least one appointment option to said at least one client, said at least one appointment option having a time of availability different than said scheduled appointment (see paragraph 25 wherein an appointment option with a different time availability is communicated to the client);
- electronically selecting said at least one appointment option by said at least one client to fill said at least one open appointment time slot (see paragraph 39 wherein the system electronically fills the open slot with the client's appointment and sends a confirmation message);
- wherein a rejected appointment option is electronically communicated to a second client, and wherein a cancelled appointment is electronically communicated to said second

client (see paragraph 27 wherein appointments are waitlisted and secondary clients are contacted when an appointment is canceled or rejected);

Kagami fails, however, to teach the method further comprising: removing said selected at least one appointment option from said contact list; canceling said scheduled appointment of said at least one client; and placing said cancelled appointment in said appointment list. Official notice is hereby taken to the effect that it was well known to one of ordinary skill in the art, at the time of the invention, to remove said selected at least one appointment option from said contact list. It was well known for working scheduling systems to have some method of tracking the appointments that it has already booked to avoid double booking clients. Usually as soon as an empty slot is filled it is removed from the list of available appointments so that it cannot be issued to a second client; this constitutes the type of basic functionality that can be found in almost any effective scheduling program.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the method of Kagami to include the limitation of removing said selected at least one appointment option from said contact list, in order to keep the database of available appointments as current as possible, which in turn would minimize the occurrence of double-bookings and increase the efficiency of the system in general.

With respect to the remaining two limitations of claim 9, Waytena et al. does disclose a method further comprising:

- canceling said scheduled appointment of said at least one client (see paragraphs 16-17 wherein patrons are able to cancel their reservations); and

- placing said canceled appointment in said appointment list (see paragraph 16 wherein canceled appointments are released back into the appointment list).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to further modify the method of Kagami to include that of Waytena et al. in order to keep the database of available appointments as current as possible. This would increase the efficiency of the scheduler by allowing it to fill recently canceled, empty appointments as soon as they become available, predictably resulting in a far more dynamic and useful embodiment of the invention, since such modifications could have been performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Conclusion

8. **Examiner's Note**: Examiner has cited particular paragraphs and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adrian J. McPhillip whose telephone number is (571)270-5399. The examiner can normally be reached on Monday to Thursday 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571)272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. J. M./
Examiner, Art Unit 3623

12/14/2008

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623